

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gregory Joss	Team: Team # 3	CCRB Case #: 201201341	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/30/2012 11:15 PM	Location of Incident: Vanderbilt Avenue and Targee Street	Precinct: 120	18 Mo. SOL 7/30/2013	EO SOL 7/30/2013	
Date/Time CV Reported Tue, 01/31/2012 1:36 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 01/31/2012 1:36 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Stephen Gardell	04781	921360	120 PCT
2. POM Michael Corsello	13665	943106	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Stephen Gardell	Abuse: Sergeant Stephen Gardell supervised the stop of § 87(2)(b) s vehicle.	
B.POM Michael Corsello	Abuse: Officer Michael Corsello frisked § 87(2)(b)	
C.POM Michael Corsello	Abuse: Officer Michael Corsello searched § 87(2)(b)	
D.SGT Stephen Gardell	Abuse: Sergeant Stephen Gardell searched § 87(2)(b)	
E.POM Michael Corsello	Abuse: Officer Michael Corsello searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On January 31, 2012, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board via the Call Processing System (Encl. 5A-5B).

On January 30, 2012 at approximately 11:15 p.m. in the vicinity of Vanderbilt Avenue and Targee Street in Staten Island, § 87(2)(b) was pulled over in his vehicle by Sgt. Stephen Gardell, PO Michael Corsello, and an unidentified officer from the 120th Precinct. No arrests or summonses were issued. The following allegations resulted:

Allegation A: Abuse of Authority – Sergeant Stephen Gardell supervised the stop of § 87(2)(b)'s vehicle.

§ 87(2)(g)

Allegation B: Abuse of Authority – Officer Michael Corsello frisked § 87(2)(b)

§ 87(2)(g)

Allegation C: Abuse of Authority – Officer Michael Corsello searched § 87(2)(b)

Allegation D: Abuse of Authority – Sergeant Stephen Gardell searched § 87(2)(b)

§ 87(2)(g)

Allegation E: Abuse of Authority – Officer Michael Corsello searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)

On October 16, 2012, § 87(2)(b) rejected the mediation process as an alternative method to resolve this complaint.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) at the time of this incident. He is a black man with § 87(2)(b)

CCRB Statement

On March 20, 2012, § 87(2)(b) was interviewed at the CCRB (Encl. 6A-6G). His statement is summarized below.

On January 30, 2012, § 87(2)(b) dropped off his girlfriend, § 87(2)(b) at her house at § 87(2)(b) in Staten Island. Prior to dropping off § 87(2)(b) they had been at school § 87(2)(b) in New Jersey. § 87(2)(b) drove to § 87(2)(b) house and dropped her off without getting out of the car. § 87(2)(b) and § 87(2)(b) did not exchange anything before she left the vehicle. § 87(2)(b) then drove up Park Hill Road, made a left onto Sobel Court, and then a right onto Targee Street. He was obeying the speed limit and using his traffic signals.

§ 87(2)(b) was driving a 2000 grey Nissan 2-door extended cab pick-up truck (owned by his brother, Abu Sesay) with Pennsylvania plates (number unknown). The vehicle's equipment was working properly the date of the incident.

§ 87(2)(b) made a left onto Vanderbilt Avenue and was pulled over by a marked NYPD van with its lights flashing. § 87(2)(b) sat in his car, with all of the windows up, the interior lights off, listening to the news on the radio at a high volume. The officers twice instructed § 87(2)(b) to roll his windows down over the loud speaker. § 87(2)(b) rolled down the driver's side window and turned the volume down on the radio. § 87(2)(b) described the lighting as dim and the vehicular and pedestrian traffic in the area as light.

Three uniformed officers exited the police van and approached § 87(2)(b)'s vehicle. § 87(2)(b) kept his hands on the wheel the entire time. An officer, identified by the CCRB through investigation as PO Michael Corsello of the 120th Precinct, approached the driver's side of § 87(2)(b)'s vehicle. PO Corsello was described as a white man, approximately 5'2" to 5'4" tall, 130-135 pounds, and in his late 20s to his early 30s. The other two officers, one of which was identified as Sgt. Stephen Gardell of the 120th Precinct, approached the passenger side and shown their flashlights into the vehicle. Sgt. Gardell was described as a white man, approximately 5'6" tall, 160-189 pounds, and in his mid to late 40s. The third unidentified officer, was described as a white man, taller than PO Corsello and Sgt. Gardell, with a muscular build, a low fade haircut, and in his late 30s to early 40s.

All three officers were yelling for § 87(2)(b) to roll his passenger window down. § 87(2)(b) rolled down the window. PO Corsello asked why he did not roll his window down right away. § 87(2)(b) explained that he could not hear with all three officers yelling at him at the same time. PO Corsello said to § 87(2)(b) "You are supposed to say 'good evening officer' when you are pulled over." § 87(2)(b) explained to PO Corsello that it should be the other way around and that the officers should extend courtesy to him. § 87(2)(b) described his demeanor as calm.

Without asking for § 87(2)(b)'s license or registration, PO Corsello ordered him out of the vehicle and to stand at the rear. § 87(2)(b) was compliant. PO Corsello searched § 87(2)(b)'s vehicle by going into the truck's cab. From where he was standing, § 87(2)(b) could not see exactly where in the vehicle PO Corsello was searching. § 87(2)(b) indicated that he had several prescription pill bottles wrapped in a black plastic bag on the rear floor of his truck. § 87(2)(b) stated that the bag had holes in it. He did not specify the size of the holes, but stated you would not know there are prescription pills in the bag unless you handled it. § 87(2)(b) stated that you would not be able to see the bag of pills from outside of the car. § 87(2)(b) also had cases of water and his computer bag in the back. He did not have any prescription pill bottles in the center console or anywhere else visible in the car.

The unidentified officer asked § 87(2)(b) if he had anything illegal on him. § 87(2)(b) asked the officer what he meant by that. The officer asked § 87(2)(b) if he had anything on him that he was not supposed to have. § 87(2)(b) stated that everything he had in his possession belonged to him. The officer ordered § 87(2)(b) to put his hands on the bed of the truck. § 87(2)(b) continued to ask what he had done wrong, but the officers did not respond.

PO Corsello § 87(2)(b) stated it was the unidentified officer, but the CCRB determined that it was PO Corsello patted down § 87(2)(b) all over his body. § 87(2)(b) was wearing blue jeans, a red and grey pull over, a corduroy jacket, and a scarf. § 87(2)(b) had cash in his right pants pocket, flash drives in his right rear pants pocket, business cards in his left pants pocket, his wallet in his right rear pocket, and prescription pills in the left pocket of his jacket. PO Corsello felt the prescription pill bottle and asked what the object was. § 87(2)(b) told PO Corsello that it was his medication. PO Corsello then removed the bottle from § 87(2)(b)'s pocket. § 87(2)(b) described the dimensions of the pill bottle as being three inches long with

the circumference a little larger than a quarter. PO Corsello did not go into any of § 87(2)(b)'s other pockets.

Sgt. Gardell asked § 87(2)(b) for his identification. As § 87(2)(b) went to retrieve his wallet in his back pocket, Sgt. Gardell removed the wallet himself and removed his NYS driver's license. Sgt. Gardell did not pat § 87(2)(b) down or go into any of his other pockets. Sgt. Gardell asked PO Corsello about the name on the prescription pill bottle and the officers confirmed that the medication belonged to § 87(2)(b). PO Corsello continued to search § 87(2)(b)'s vehicle, but § 87(2)(b) could not specify where and did not see PO Corsello remove anything from the vehicle.

§ 87(2)(b)'s ID and items were returned to him and the unidentified officer said, "Get out of here, we're done with you." § 87(2)(b) replied, "Oh you mean you're talking to me like a dog?" PO Corsello told § 87(2)(b) that the reason they pulled him over was because his license plate did not have a tag. § 87(2)(b) did not know what PO Corsello meant by this and informed the CCRB that he had all the proper documentation for the vehicle. The officers then left the location. No summons was issued to § 87(2)(b).

Photo Viewing

On August 10, 2012, § 87(2)(b) appeared at the CCRB to view photos of potential subject officers. § 87(2)(b) positively identified Sgt. Gardell, but failed to identify any other officers as being present during the incident (Encl. 7A-7G).

NYPD Statements:

Subject Officer: OFFICER MICHAEL CORSELLO

- *PO Corsello is a § 87(2)(b).*
- *On January 30, 2012, PO Corsello worked from 5:30 p.m. to 2:05 a.m. He was dressed in uniform and assigned as Sgt. Stephen Gardell's operator in marked van # 8708.*

Memo Book

At 11:08 p.m., car stop at Vanderbilt and Targee. At 11:12 p.m., male driver refused to roll down car windows, removed from vehicle for officers' safety and frisked after failing to comply with lawful orders. At 11:20 p.m., 93Q (report prepared) – UF 250 – Grand Larceny Auto. Proper identification. Original stop for turning without signal and expired registration. SPRINT # § 87(2)(b) (Encl. 8A-8C).

Stop, Question and Frisk Report

The handwritten Stop, Question and Frisk Report completed by PO Corsello indicates the § 87(2)(b) was stopped on suspicion of grand larceny auto at Vanderbilt Avenue and Targee Street. Circumstances that led to the stop are listed as furtive movements, actions indicative of "casing," and actions indicative of acting as a lookout. The report indicates that § 87(2)(b) was frisked due to furtive movements and refusal to comply with officer's directives. No search was conducted and no weapon was found. § 87(2)(b)'s demeanor is described as "irritated" (Encl. 9A-9B).

CCRB Statement

On February 12, 2013, PO Corsello was interviewed at the CCRB (Encl. 10A-10C). His statement is summarized below.

On January 30, 2012 at approximately 11:08 p.m. in the vicinity of Vanderbilt Avenue and Targee Street in Staten Island, PO Corsello observed a vehicle, a pickup truck, with a Pennsylvania license plate and an expired registration sticker. PO Corsello stated that this area is prone to illegal narcotics activity and auto larceny, so seeing an out of state plate with expired tags heightened PO Corsello's suspicions that the vehicle could be stolen.

PO Corsello was a car length behind the vehicle, operated by § 87(2)(b). PO Corsello described the traffic conditions as light. When § 87(2)(b) made a left on to Vanderbilt Avenue, he failed to use a turn signal, so PO Corsello pulled him over for the traffic infraction and to investigate the expired registration sticker.

There is no computer in the police van, so the officers could not run § 87(2)(b)'s plates. The officers exited the vehicle and PO Corsello approached the driver's side while Sgt. Gardell approached the passenger side. Both windows of § 87(2)(b)'s pickup truck were rolled up. PO Corsello asked § 87(2)(b) several times to roll down his window, but he refused, creating a dangerous situation for the officers. PO Corsello did not recall what movements, if any, § 87(2)(b) was making with his hands.

PO Corsello opened § 87(2)(b)'s door and asked him to step out of the vehicle. PO Corsello asked § 87(2)(b) why he wouldn't roll down the window, and § 87(2)(b) responded by asking, "Why are you stopping me?" PO Corsello explained to § 87(2)(b) that he failed to signal when turning and had an expired registration.

PO Corsello brought § 87(2)(b) to the rear of the pickup truck. Other than failing to comply with PO Corsello's requests to roll down his window, there was nothing else about § 87(2)(b)'s appearance or behavior that led PO Corsello to believe he had a weapon. PO Corsello stated that § 87(2)(b) was still upset about being stopped and a little "combative."

PO Corsello then frisked § 87(2)(b) around his waist area and pants pockets area. He did not frisk anywhere else on § 87(2)(b)'s body. PO Corsello stated that § 87(2)(b)'s refusal to comply with his orders to roll down the window made him fear for his safety. Other than the refusal to comply, there was nothing else about § 87(2)(b)'s actions that made PO Corsello fear for his safety. PO Corsello did not feel anything suspicious during the frisk. Sgt. Gardell did not assist with the frisk of § 87(2)(b).

§ 87(2)(b) provided PO Corsello with a Pennsylvania driver's license. PO Corsello did not remove § 87(2)(b)'s wallet from his pants pocket and did not go into any of his pants pockets. Sgt. Gardell did not search § 87(2)(b).

PO Corsello returned to the driver's side door, leaned his head into the car and looked around. He did not reach into the seats, center console, glove compartment, or anywhere else in the cabin of the pickup truck. PO Corsello observed a single pill bottle, in plain view, in the map compartment of the door. PO Corsello removed the pill bottle to ensure that it was not illegal prescription drugs. He matched the name on the pill bottle with § 87(2)(b)'s identification. Sgt. Gardell did not handle the pill bottle, nor did he search the vehicle.

PO Corsello was shown the Stop, Question and Frisk report he prepared for this incident. He stated that he checked "actions indicative of casing" and "actions indicative of acting as lookout" as circumstances that led to the stop because that particular area, § 87(2)(b) near the gas station, is a very drug prone location. PO Corsello stated that anyone driving slowly past the location raises suspicion. PO Corsello stated that § 87(2)(b) was driving slowly.

PO Corsello ran a radio check of § 87(2)(b)'s identification and license plate and determined that the car was not stolen. § 87(2)(b) was then free to go. PO Corsello confirmed that both failing to signal and having expired registration tags are summonsable offenses. After verifying that the vehicle was not stolen, PO Corsello used discretion and let § 87(2)(b) go without a summons.

Subject Officer: SERGEANT STEPHEN GARDELL

- *Sgt. Gardell is a § 87(2)(b).*
- *On January 30, 2012, Sgt. Gardell worked from 5:15 p.m. to 2:12 a.m. He was dressed in uniform and assigned as the Impact Response Team supervisor in the 120th Precinct with PO Michael Corsello in marked van # 8708.*

Memo Book

At 11:08 p.m., car stop at Vanderbilt and Targee. At 11:20 p.m., 93Q (report prepared), UF 250 x 1 (Encl. 11A-11D).

CCRB Statement

On February 13, 2013, Sgt. Gardell was interviewed at the CCRB (Encl. 12A-12C). His statement is summarized below.

On January 30, 2012 at approximately 11:08 p.m., Sgt. Gardell and PO Corsello were parked outside of § 87(2)(b) near the corner of Vanderbilt Avenue in Brooklyn. The officers observed a vehicle, operated by § 87(2)(b) turn left onto Vanderbilt Avenue, from Targee Street, without signaling.

The officer followed the vehicle. § 87(2)(b) was slowing down and then speeding back up, and also looking around. Sgt. Gardell indicated that this particular area, near § 87(2)(b) has a high incidence of crime, namely drug, gun, and robbery violence. Sgt. Gardell also remembered there being a problem with the vehicle's registration, but Sgt. Gardell did not recall if that was discovered before or after the stop.

The officers pulled § 87(2)(b) over and exited the van. The officers approached § 87(2)(b)'s vehicle, with PO Corsello approaching the driver's side and Sgt. Gardell approaching the passenger side. PO Corsello instructed § 87(2)(b) numerous times to roll down his window, but he refused. § 87(2)(b) kept asking, "Why are you stopping me?" and stated, "I'm not rolling my window down." § 87(2)(b) was also moving and talking with his hands. PO Corsello and Sgt. Gardell repeatedly told § 87(2)(b) to roll down the window and to show his hands. The windows of § 87(2)(b)'s pickup truck are not tinted, but the dome lights were not on and the area is not well lit. Sgt. Gardell described the situation as "tense."

Sgt. Gardell instructed PO Corsello to check if the driver's side door was open, which it was. Sgt. Gardell instructed PO Corsello to have § 87(2)(b) exit the vehicle. PO Corsello informed § 87(2)(b) why he had been stopped. Sgt. Gardell did not recall how § 87(2)(b) responded.

PO Corsello then observed what appeared to be a prescription pill bottle in the map compartment of the door. Sgt. Gardell, from his vantage point, did not observe the pill bottle. PO Corsello removed the bottle in order to confirm that the pills belonged to § 87(2)(b).

Because § 87(2)(b) was being uncooperative, and acting furtively, namely moving his arms around, the officers feared for their safety. As such, PO Corsello frisked § 87(2)(b)'s waist area to ensure he did not have any weapons on him. Sgt. Gardell did not observe anything about § 87(2)(b)'s appearance or clothing that led him to believe that he had a weapon. Sgt. Gardell stated that any observations made, were made by PO Corsello.

PO Corsello did not go into any of § 87(2)(b)'s pockets or remove anything from his pockets. Sgt. Gardell did not search § 87(2)(b) nor did he recall having any physical contact with him. Other than removing the pill bottle from the doorway, PO Corsello did not conduct any further search of § 87(2)(b)'s vehicle. Sgt. Gardell never searched the vehicle.

The officer ran a radio check on the vehicle to ensure it was not stolen. Once it was confirmed that the pills belonged to § 87(2)(b) and that the vehicle was not stolen, Sgt. Gardell

left it up to the discretion of the officer as to whether to issue a summons for the traffic violation. PO Corsello opted not to issue a summons and § 87(2)(b) was free to leave.

Attempts to Identify Officers

- § 87(2)(b) could not identify the third officer at the incident location. The investigation, using the 120th Precinct roll call (Encl. 14A-14L), the Stop, Question and Frisk Log (Encl. 15A-15D), and the BADS database, identified potential subject officers and obtained their photos and memo books. § 87(2)(b) could only identify Sgt. Gardell from the photo viewing and none of the memo books obtained had entries pertaining to this incident. Sgt. Gardell and PO Corsello did not have any entries in their memo books indicating that a third officer was with them at the time of this incident. During the interview process of officers, Sgt. Gardell and PO Corsello did not remember if a third officers was with them during this incident. Sgt. Gardell, who was supervising approximately 30 foot posts on the date of incident, and PO Corsello stated that it was possible a third officer was present because they were constantly picking up officers on post for meal breaks, relocation, or to return them to the stationhouse.

NYPD Document

SPRINT Report

SPRINT report number § 87(2)(b) indicates that at 11:08 p.m., a patrol supervisor from the 120th Precinct had a car stopped at Vanderbilt Avenue and Targee Street. The report indicates that § 87(2)(b)'s license was verified as proper identification (Encl. 13A-13B).

Status of Civil Proceedings

- As of March 18, 2013, 11 months past the 90-day filing deadline, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding the incident (Encl. 19A-19B).

§ 87(2)(c)

Civilian CCRB History

- § 87(2)(b)

Subject Officers CCRB History

- PO Corsello has been a member of the service for six years and there are no substantiated CCRB allegations against him (Encl. 2A).
- Sgt. Gardell has been a member of the service for 14 years and there are no substantiated CCRB allegations against him (Encl. 2B).

Conclusion

Identification of Subject Officers

- PO Corsello and Sgt. Gardell acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A: Abuse of Authority – Sergeant Stephen Gardell supervised the stop of § 87(2)(b)'s vehicle.

PO Corsello and Sgt. Gardell stated that they pulled § 87(2)(b) over for failing to use a left turn signal. PO Corsello further indicated that he observed that § 87(2)(b) had an expired registration sticker on his license plate and suspected the vehicle might be stolen, which he indicated in the Stop, Question and Frisk Report. § 87(2)(b) stated that he was obeying all traffic laws and using his turn signals, and also that he had all of the proper documentation for the vehicle. § 87(2)(b) was not summonsed for either infraction.

§ 87(2)(g)

Allegation B: Abuse of Authority – Officer Michael Corsello frisked § 87(2)(b)

It is undisputed that PO Corsello frisked § 87(2)(b). PO Corsello stated that § 87(2)(b)'s refusal to comply with his directives to lower his window, and his suspicion that § 87(2)(b)'s vehicle might be stolen, made him fear for his safety. Hence, the reason PO Corsello frisked § 87(2)(b) PO Corsello did not make any observations that led him to believe that § 87(2)(b) might have a weapon.

An officer has the authority to frisk a person if the officer reasonably suspects the person is armed. People v. De Bour, 40 N.Y.2d 210 (1976) (Encl. 1A-1K). Furthermore, reasonable suspicion of a person being involved in a violent crime provides an officer with reasonable suspicion that the suspect might have a weapon. People v. Torres, 657 N.Y.S.2d 622 (1997) (Encl. 1L).

§ 87(2)(g)

Allegation C: Abuse of Authority – Officer Michael Corsello searched § 87(2)(b)

Allegation D: Abuse of Authority – Sergeant Stephen Gardell searched § 87(2)(b)

§ 87(2)(b) alleged that PO Corsello removed a prescription pill bottle from his jacket pocket and that Sgt. Gardell removed his wallet from his back pants pocket. PO Corsello and Sgt. Gardell denied removing anything from § 87(2)(b)'s pockets and denied searching him. PO Corsello and Sgt. Gardell stated that a prescription pill bottle was removed from § 87(2)(b)'s vehicle.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b) was an occupant.

§ 87(2)(b) alleged that PO Corsello searched his vehicle by “going into the truck’s cab,” however, § 87(2)(b) from his vantage point, could not describe the scope of the search. § 87(2)(b) stated that he had prescription pill bottles in a bag on the rear floor of his vehicle, but none in a visible area. PO Corsello stated that he limited his search to removing a single prescription pill bottle from the map compartment in the driver’s side door and merely poking his head in the cab of § 87(2)(b)’s truck. PO Corsello could not remember any movements § 87(2)(b) made while seated in his truck.

Pursuant to the automobile exception, the police may search a vehicle when they have probable cause to believe the vehicle has contraband or weapons. People v. Parker, 50 A.D.3d 603 (2008) (Encl. 1Q-1R). Officers may conduct a limited weapons search of the reachable area of the vehicle when they see a person make furtive movements inside the vehicle. People v. Torres, 74 N.Y.2d 224 (1989) (Encl. 1S-1Y). The observation of a labeled pill bottle in a car does not create probable cause for a search. People v. Carbone, 184 A.D.2d 648 (1992) (Encl. 1Z-1AA); People v. Amarosa, 55 A.D.2d 621 (1976) (Encl. 1AB-1AD).

It is undisputed that § 87(2)(b)'s vehicle was searched by PO Corsello. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date